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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

FRES CO. LLC,

Case No.: 23-5289

Plaintiff,

-against-

**ORDER TO SHOW CAUSE
WITH TEMPORARY
RESTRAINING ORDER**

MARCHELLA OF NY INC., MARK ARONBAYEV,
individually, and MANASHE YUKHANANOV,
individually,

Defendant

UPON the annexed affidavit of CHARLES DIMAGGIO, dated July 11, 2023, with exhibits, the application, certification of Leonard Kreinces, Esq., dated July 10, 2023, the complaint dated July 6, 2023, and the accompanying Memorandum of Law, it is

ORDERED, that the defendants, MARCHELLA OF NY INC., MARK ARONBAYEV, and MANASHE YUKHANANOV, show cause before the Honorable Judge Joan M. Azrack United States District Judge, at the United States Courthouse, 100 Federal Plaza, Central Islip, New York 11722 on July 26, 2023 at 11:00 AM in Courtroom 920, why a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure should not issue enforcing the statutory trust under Section 5(c) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(4), by enjoining the defendants, their agents, employees, successors, banking institutions, attorneys, and all other persons in active concert and participation with them from using PACA trust assets in their ordinary course of business, or otherwise dissipating trust assets or making payment of any trust asset to any creditor, person or

entity until further order of this Court or until the defendants pay ONE HUNDRED THREE THOUSAND FIVE HUNDRED NINE and 00/100 (\$103,509.00) DOLLARS, plus interest, costs, and attorneys' fees to the plaintiff; and

IT APPEARING to the Court from the certification of Charles DiMaggio, that the defendants are about to commit the acts hereinafter specified and that they will do so unless restrained by order of this Court, and that immediate and irreparable injury, loss or damage will result to plaintiff before notice can be given and the defendants or their attorneys can be heard in opposition to the granting of a temporary restraining order, in that plaintiff and other PACA trust creditors will suffer immediate and irreparable injury in the form of a loss of trust assets; it is therefore

ORDERED, that defendants, MARCHELLA OF NY INC. ("Marchella"), MARK ARONBAYEV, and MANASHE Y KHANANOV, their agents, officers, assigns, banking institutions and attorneys and all persons in active concert and participation with them be and they hereby are:

(i) temporarily restrained from violating the provisions of the Perishable Agricultural Commodities Act 7 U.S.C. §499a et seq. (hereinafter "PACA") and the regulations promulgated thereunder; and

(ii) temporarily restrained from, in any way, directly or indirectly, in whole or in part, absolutely or as security, paying, withdrawing, transferring, assigning or selling any and all existing PACA trust assets, including but not limited to the premises located at 3563 Lawson Boulevard, Oceanside, New York 11520 and/or otherwise disposing of company or personal Assets to any creditors, persons or entitles until further order of this Court or until the defendants pay the plaintiff the sum of \$103,509.00 plus interest, costs, and attorneys' fees, and

(iii) ordered that if the defendants fail to pay plaintiff in full within three (3)

business days from the date of service of this order on the defendants, the defendants must account to this Court and counsel for the plaintiff for the following items generated in defendants' business, to wit: any and all perishable agricultural commodities, inventories of food or other products derived from such perishable agricultural commodities, and any and all receivables or proceeds from such commodities and food or other products, which in any way have been distributed or disposed of, directly or indirectly, in whole or in part, absolutely or as security since the establishment of the PACA trust with a description of the property involved, the recipient, the date and the purpose of the distribution. Defendants shall provide this accounting, including accounts receivable reports and a complete list of all accounts receivable of defendant generated by its perishable agricultural commodities business, signed under the penalty of perjury and must file it with the Court and provide to counsel for plaintiff within four (4) business days from the date of service; and

(iv) ordered that if the defendants fail to pay plaintiff in full within ten (10) business days from the date of service of this order on the defendants, the defendants must account to this Court and counsel for the plaintiff for all assets in defendants' ownership, possession, custody and/or control, or in the possession, custody and/or control of entities controlled by defendants, including the date of acquisition and whether or not such assets or any interest therein derived from the proceeds of the sale of perishable agricultural commodities by defendant, and, if not, the source of such assets. Defendants must provide all documents concerning the assets and liabilities of Marchella and its related subsidiary companies, including, but not limited to, the most recent balance sheets, profit/loss statements, accounts paid records, income tax returns, and bank records with cancelled checks for the last 90 days. Defendants must provide these documents to counsel for plaintiff within ten (10) business days from the date of service of this order on the defendants; and

(v) ordered to restore to the PACA trust any PACA trust assets derived directly or indirectly from Defendant's operations and received or transferred by them which are lawfully obtainable by Defendants; and

(vi) ordered to segregate and escrow all proceeds from the sale of perishable agricultural commodities in a trust account to be designated "MARCHELLA OF NY INC. - In Trust" with plaintiffs counsel, Kreinces & Rosenberg, P.C., as escrow agent, depositing therein all cash assets of the PACA trust, no withdrawals to be made therefrom pending further order of this Court; and

(vii) ordered to show cause, in writing, why the Court should not grant plaintiff's counsel authority to collect all accounts receivable of defendants generated by perishable agricultural commodities and to deposit those proceeds in the aforesaid trust account, and it is further

ORDERED, that this Order will be binding upon the parties to this action, their officers, agents, servants, employees, banks, or attorneys and all other persons or entities who receive actual notice of this Order, and it is further

ORDERED. that this order will expire fourteen (14) days after entry unless within such time the order for good cause shown is extended for a like period, or unless the defendants' consent that it may be extended for a longer period; and it is further

ORDERED, that the plaintiff shall not be required to post a bond hereunder, and it is further

ORDERED, that this order to show cause together with copies of the papers upon which it was granted be served upon the defendants, MARCHELLA OF NY INC., MARK ARONBA YEV, and MANASHE YUKHANANOV, by overnight delivery on or before July 19, 2023, before 5:00 p.m.; and it is further

ORDERED, that opposing papers shall be served so as to be received by plaintiff's counsel, and courtesy copies received by the Court, by noon on July 25, 2023.

This Temporary Restraining Order is entered this 18th day of July, 2023. A hearing on

plaintiff's motion for a preliminary injunction is scheduled for July 26, 2023 at 11:00 AM in Courtroom 910.

Dated: July 18, 2023

Central Islip, NY

JMA /s/

Joan M. Azrack
United States District Judge